

GENERAL TERMS AND CONDITIONS

EAGLE ENVIRONMENTAL HEALTH, INC.

1. References herein to "Eagle" refer to Eagle Environmental Health, Inc. References to "Project" mean the project as defined in Eagle's written proposal to the client. Any proposal submitted by Eagle for the performance of a proposed Project shall be firm for a period of sixty (60) days. Upon the expiration of that period of time, Eagle reserves the right to modify the proposed basis of payment and fees to allow for changing costs and to adjust the time of performance to conform to changing work loads.
2. Unless Eagle's proposal provides otherwise, the proposed fees constitutes Eagle's best estimate of the probably cost required to complete the proposed Project. The estimated probable cost identified in Eagle's proposal shall not be deemed to be either a guaranteed maximum or "guaranteed not-to-exceed" amount with respect to the cost of performing the Project identified in any such proposal. However, in performing any project, Eagle will not proceed to expend more than the amount identified as the estimated probable cost in Eagle's proposal without the client's prior approval.
3. Cost and schedule commitments contained in Eagle's proposal shall be subject to renegotiation for unreasonable delays caused by the client's failure to provide specified facilities or information or for delays caused by unpredictable occurrences such as fires, floods, strikes, riots, unavailability of labor or materials or services, process shutdown, acts of God or of the public enemy, or acts of regulations of any governmental agency. Work stoppage or interruption caused by any of the above will result in additional cost (reflecting a change in scope) beyond that outlined in Eagle's proposal, for performance of the Project, entitling Eagle to an adjustment to the cost and schedule.
4. When the method of contract payment for Eagle's services is based on a time-and-material or cost reimbursable basis, the following commercial terms shall apply:
 - a. The minimum time segment for charging of field work is four (4) hours. For work done at any of Eagle's offices, the minimum time segment is one-half hour. There is no premium charge for overtime.
 - b. Where any agreement is based on the salary cost of specific individuals, normal and customary salary increases will become effective immediately upon Eagle's authorization and will be reflected in the next invoice submitted to the client.
 - c. Expenses properly chargeable to the project will include: travel and living expenses of Eagle personnel on business connected with the Project; shipping costs; reproduction costs; bindery and FAX costs at Eagle's standard rates; computer usage and record processing time and software; equipment rental charges; professional, analytical and technical subcontractors and advisors retained in connection with the Project; identifiable drafting and stenographic supplies; and expendable materials and supplies purchased specifically for the Project. A 10 percent handling and administrative charge will be added to all third party project expenses, except that a 10 percent handling and administrative charge will be added to all third party analytical expenses. If the services covered by any Eagle proposal are subject to local or state taxes or fees, such additional costs will be charged to the Project and reimbursed by the client.
 - d. In lieu of all other itemized telephone communication charges (other than FAX charges), a communications charge of two percent of the amount of Eagle's labor charges reflected on each invoice will be billed to defray telephone communication costs for clients beyond Eagle's telephone service area. Clients within that area will be subject to a 0.5 percent communications charge.
5. Invoices will be submitted on a monthly basis payable upon receipt. Unpaid balances will be subject to interest at the rate of 1.5 percent per month or the maximum permissible under state law, whichever is less, starting 30 days from the invoice date. Payments received will be applied first to any accrued interest, with the balance of the payment then applied to any unpaid fees. In addition, Eagle may, after giving seven (7) days written notice, suspend services under any agreement without liability until all past due accounts (including fees and accrued interest) have been paid. Timely payment is a substantial condition of client's performance of any agreement between Eagle and client. In the event Eagle must take legal action to be paid for its services and prevails, all collection and legal costs associated with such action shall be reimbursed by the client.
6. Except as provided in Paragraph 5, any agreement may be terminated in whole or in part in writing by either party in the event of substantial or material failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with the terminating party prior to the effective date of such termination.

A final invoice will be calculated on the first or fifteenth of the month (whichever comes first) following the effective date of termination.

 - a. Where method of payment is based on a "lump sum" the final invoice will be based on the percentage of the work completed up to the effective date of termination.
 - b. Where method of contract payment is based on time and materials, the final invoice will be based on reimbursement for all services and expenses associated with the Project up to the effective date of termination.
 - c. Where method of contract payment is based on cost plus a fixed fee, the final invoice will be based on reimbursement for all costs up to the effective date of termination and a pro-rata share of the fixed fee.

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For each of the above methods of preparing the final invoice, there shall be an additional charge for Project closeout equal to three percent of all project billings up to the effective date of termination. This closeout charge shall not be considered a penalty, but represents an allowance for recovery of costs for demobilization and reassignment of personnel and equipment on short notice.

7. Insurance

- a. Eagle shall maintain policies of insurance for the following types of coverage, each (with the exception of Workers' Compensation) with a limit of liability of \$1,000,000, combined single limit:
- Workers' Compensation (statutory) and Employer's Liability;
 - Comprehensive General Liability; and
 - Comprehensive Automobile Liability

Eagle shall, at the client's request, provide the client with a certificate of insurance or other satisfactory evidence that such insurance has been obtained and that such policies are maintained in force throughout the period in which Eagle provides services to the client under any agreement.

- b. Upon the mutual agreement of Eagle and the client, Eagle shall procure and maintain one or more policies of insurance in addition to the types of insurance described above or procure policies of insurance coverage of the same types described above with increased policy limits, to the extent that such insurance is available. Additional premiums and costs incurred by Eagle in connection with obtaining such additional or different policies of insurance shall be reimbursed by the client as an additional Project expense.

8. Indemnification

- a. Eagle shall indemnify and hold harmless the client and its directors, officers, employees, and agents from and against all liability, claims, suits, losses, damages, costs and demands, including reasonable legal expenses and attorney's fees connected therewith, on account of personal injury, including death, or property damage, sustained by any person or entity not a party to any agreement between Eagle and client and arising out of or connected with the performance of such agreement, to the extent such injury, death or damage is caused by the sole or contributory negligence or willful misconduct of Eagle or its subcontractors or their respective employees, officers and agents; provided that such injury, death or damage is not occasioned by the sole negligence of client or its contractors or their respective employees, officers and agents; and provided further, that Eagle's liability under this indemnity provision shall be limited to and not exceed the insurance coverages and associated limits of liability which Eagle is required to secure pursuant to Paragraph 7, hereof; and provided further, that Eagle's obligation hereunder shall not extend to indemnification or holding harmless of a party indemnified hereunder for any claims of loss of profits or any other indirect, special, incidental or consequential damages of any nature whatsoever.

- b. Client shall indemnify and hold harmless Eagle and its directors, officers, employees, and agents from and against all liability, claims, suits, losses, damages, costs and demands, including reasonable legal expenses and attorney's fees connected therewith, on account of personal injury, including death, or property damage, sustained by any person or entity not a party to any agreement between Eagle and client and arising out of or connected with the performance of such agreement, to the extent such injury, death or damage is caused by the sole or contributory negligence or willful misconduct of client or its contractors or their respective employees, officers and agents; provided that such injury, death or damage is not occasioned by the sole negligence of Eagle or its subcontractors or their respective employees, officers and agents; and provided further, that client's obligation hereunder shall not extend to indemnification or holding harmless of a party indemnified hereunder for any claims of loss of profits or any other indirect, special, incidental or consequential damages of any nature whatsoever.

- c. Client acknowledges that Eagle has neither created nor contributed to the creation or existence of any type of hazardous or toxic waste, material, chemical, compound, or substance, or any other type of environmental hazard, contamination, or pollution, whether latent or patent, or the release thereof or the violation of any law or regulation relating thereto, at the site of the Project or in connection with the performance of the Project; and it is understood that Eagle shall have no liability for any such condition, and client shall indemnify Eagle for any and all loss, cost, or damage actually sustained and incurred by Eagle in connection therewith.

- d. The provision of this Paragraph 8 shall survive the completion of the Project or the expiration, cancellation or termination of any agreement between Eagle and client.

9. Standard of Care

- a. While performing services under any agreement, Eagle shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of the environmental engineering and consulting profession performing the kind of services to be performed thereunder and practicing in the same or similar locality at the same time.

- b. Except for the express promise set forth in subparagraph a., above, regarding Eagle's standard of care, Eagle neither makes, nor offers, nor shall Eagle be liable to client for any express or implied warranties with respect to the performance of Eagle's services. Estimates of cost, approvals, recommendations, opinions, and decisions by Eagle are made on the basis of Eagle's experience, qualifications, and professional judgement and are not guaranteed. Eagle shall not be regarded as a guarantor with respect to any work product provided to client. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY WAIVED BY CLIENT.

- c. Eagle agrees to reperform and correct at its expense any work or services performed by Eagle which fails to conform to the standard of care that Eagle has accepted pursuant to subparagraph a., above.
- d. In no event shall Eagle and Eagle's officers, directors, employees, agents and independent professional consultants, and any of them, be liable to client and/or anyone claiming by, through or under client, including client's insurers, for any lost, delayed, or diminished profits, revenues, or opportunities; losses by reason of shutdown or inability to utilize or complete work at the site of the Project; or any other incidental, special, indirect, or consequential damages of any kind or nature whatsoever resulting from Eagle's performance or failure to perform services pursuant to any agreement.
- e. Eagle and Eagle's officers, directors, employees, agents and independent professional consultants, and any of them, shall not be liable to client and/or anyone claiming by, through or under client, including client's insurers, nor shall Eagle be liable to indemnify client pursuant to Paragraph 8, hereof, in an amount which exceeds either (i) \$100,000 or the total compensation value to Eagle of the Project, whichever amount is less, if the claims of client or client's insurers against Eagle are not covered by the insurance coverages and associated limits of liability which Eagle is required to maintain pursuant to Paragraph 7 hereof or (ii) \$1,000,000, if the claims of client or client's insurers against Eagle are covered by the insurance coverages and associated limits of liability which Eagle is required to maintain pursuant to Paragraph 7 hereof. The client hereby forever releases Eagle and its officers, principals, employees and agents from any liability for losses or damages sustained and incurred by the client in excess of such amount.
- f. As used in this Paragraph 9, the term "liable" or "liability" means liability of any kind, whether in contract (including breach of warranty), in tort (including negligence, whether of Eagle or others), in strict liability, for indemnity, or otherwise, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Eagle's services from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract of Eagle and/or Eagle's officers, directors, employees, agents and independent professional consultants, or any of them. The provisions of this Paragraph 9 providing for limitations of and protections against Eagle's liability shall survive the completion of the Project or the expiration, cancellation, or termination of any agreement between Eagle and client, and such provisions shall apply to the full extent permitted by law.

10. Client recognizes that, when it is known, assumed or suspected that hazardous materials exist on or beneath the surface of the site of the Project or within any structure thereon, certain sampling materials, such as drill cuttings and drilling fluids or asbestos removed for sampling, should be handled as if hazardous or contaminated. Accordingly, when sampling is included in the scope of services and when determined by Eagle in its sole and exclusive judgment to be necessary based on Eagle's assessment of the degree of contamination, hazard and risk, Eagle will promptly inform client that containerization and labeling will be performed; will appropriately contain and label such materials; and will leave the containers on site for proper, lawful removal, transport and disposal by client. Client waives any claim against Eagle, and agrees to indemnify, defend and hold Eagle harmless from any claim or liability for injury or loss which may arise as a result of the drill cuttings, drilling fluids or other assumedly hazardous materials being left on the site of the Project after their containerization by Eagle.
11. Client agrees that Eagle has authority to use its names as a client and a general description of the Project as a reference for other prospective clients.
12. If Eagle personnel are called or subpoenaed for depositions, examination, or court appearances in any dispute arising out of the Project, Eagle shall be reimbursed on a time and material basis in accordance with Eagle's then current, standard billing rates for such matters, including all out-of-pocket costs incurred in connection with such matters.
13. If any of these General Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The parties agree to reform the contract between them to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.
14. Once the client has signified its acceptance of Eagle's proposal, the express terms of Eagle's proposal to client and these General Terms and Conditions shall constitute the complete and exclusive statement of the terms of the agreement between the parties and are intended as a final expression of the terms of such agreement and will supersede all prior and contemporaneous agreements, representations or conditions, express or implied, oral or written. No provision of Eagle's proposal or these General Terms and Conditions may be waived, altered, or modified in any manner, unless the same shall be set forth in writing and signed by a duly authorized officer of Eagle. Client may use its standard business forms (such as purchase orders) to administer any agreement between Eagle and client, but use of such forms shall be for convenience purposes only, and any typed provision in conflict with the terms of Eagle's proposal or these General Terms and Conditions and all preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.